

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 653 OF 2006

Jayashri alias Kalyani Umesh Deshpande. ...Applicant
V/s.
The State of Maharashtra. ...Respondent

Ms.Pranali Kakade for Applicant.
Ms.Rajeshree M. Gadhavi, APP for the State.

CORAM : V.M. KANADE, J.

DATED : MARCH 2, 2006

P.C. :-

. Heard learned Counsel for the applicant and learned APP for the State.

. This is an application for bail. The applicant was arrested on 8th October, 2005 in connection with an offence which was registered at the Haveli Police Station on 1st January, 2005 for the offence punishable under Sections 302, 147, 148, 149, 326, 324, 377, 120B of the IPC.

2. It is alleged that the applicant is in the prostitution racket and there was some rivalry with another hotelier, one Shri Mangesh who was also running

the prostitution business.

3. The prosecution case is that the applicant had given the contract to one Santosh to kill the said Mangesh and the deceased in their hotel. It is alleged that the said Santosh asked the assailants and other two accused to go to the hotel and commit the said offence as was asked by the applicant. Accordingly, the assailants- original accused no.1 and two others took one prostitute by named Ms.Nilofer to the hotel and thereafter, he murdered her in the room and assaulted the waiter and the other person and ran away in the rickshaw. Santosh thereafter gave a statement to the police after six months and informed the police that the contract was given by the applicant and accordingly, he had directed the assailant to carry out the said work.

4. Learned Counsel for the applicant submitted that the only evidence against the applicant is in the form of statement of co-accused which was recorded after six months and the said co-accused has in his own statement admitted that he had initially enmity with the

applicant. It is submitted that Santosh is a history sheeter and that as many as 18 cases are pending against him in Pune and other areas. It is submitted that the statement, therefore, could not be relied upon by the prosecution for the purpose of proving conspiracy against the present applicant. She further submitted that so far as the evidence of discovery is concerned which was made from the house of the brother and the applicant was not concerned in any way with the place where the said blood stained cloths were recovered. She further submitted that the statement of Maya also was not admissible in evidence and did not have a probative value since she had stated that one of the other co-accused have told her that the applicant had given a contract to commit the said act. She submitted that the said statement was also hearsay evidence and was not admissible. She further submitted that so far as the telephone records are concerned, the telephone calls which were allegedly made by the applicant from her mobile phone to the PCO also did not establish the fact of conspiracy since the said PCO could have been used by any person and therefore, there was no evidence to

connect the assailants with the said telephone calls which were made. She further submitted that there was discrepancy even otherwise in respect of time when the incident had taken place as stated by the complainant in his statement and by the co-accused who had alleged that the conspiracy was hatched at the instance of the applicant. She further submitted that the other accused except the main assailants have all been released on bail. Therefore, she is entitled to be released on bail on the ground of parity.

5. Learned APP has invited my attention to the statement of various witnesses particularly that of Maya and other witnesses who have stated that the applicant used to meet the accused and a conspiracy was hatched in the hotel where they frequently met and therefore, the statement of Niranjana coupled with the telephone records clearly indicated that the applicant was the main conspirator. She further submitted that so far as the recovery is concerned, there was evidence on record to indicate that the applicant stayed with her brother in the said bungalow from which place the clothes were

recovered.

6. I have heard the learned Counsel for the applicant and learned APP for the State at length. This is a case where, in my view, there is material to indicate that the applicant had hatched a conspiracy to eliminate the deceased. This conspiracy was hatched for the purpose of eliminating a business rivalry in respect of prostitution business. The offence therefore which has been committed is a very serious offence. Though it is true that the statement of the co-accused cannot be relied upon for the purpose of establishing a conspiracy, yet if there is sufficient material to indicate that the applicant was involved in the said offence, then in that case the applicant is not entitled to be released on bail. Considering the telephone records and the recovery of the clothes and the statement of Niranjana and the other witnesses, in my view, this is not a fit case for grant of bail.

7. The application for bail, accordingly, is rejected. The chargesheet has been filed. The hearing

of the trial is expedited. If the trial is not over within a period of six months, liberty is granted to the applicant to apply for bail.

8. It is clarified that any observations made by this Court while deciding application should not be construed as any expression of opinion on the merits of the case. These observations are made only for the purpose of considering the submissions which are made by both the learned Counsel who appeared on behalf of the applicant and respondent.

(V.M. Kanade, J.)